IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1044 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KESHAVDAS MOTIRAM
.....Appellant
Versus
STATE OF GUJARAT
....Respondent

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Appearance:
1. Criminal Appeal No. 1044 of 1990
MR Jiten M Buddhbhatti,for Appellant (amicus curiae)
MR K.G.Sheth, Addl. PUBLIC PROSECUTOR for Respondent

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CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 08/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. This appeal is directed against the judgment and order dated 17.2.90 passed by the learned Addl. Sessions Judge, Surendranagar in Sessions Case no. 68 of 1998 convicting the appellant-accused for the offence under Sec. 302 of the Indian Penal Code and sentencing him to imprisonment for life and payment of fine of Rs.3,000/-, in default to undergo simple imprisonment for one more year.

2. The prosecution case was that since Madhu, the wife of the accused Keshavdas was not bearing a child though they were married for over five years, the accused who had gone with her on 16.6.1988 to village Kherva, where her parents reside, while they were returning from the `Baliyabapa' temple at about 11 O' clock in the morning on 17.6.88, inflicted several knife blows on Madhu when she was walking ahead of him causing as many as ten incised wounds to her and her instant death. According to the prosecution, the incident was partly witnessed by the complainant and fully by the eye witnesses Bhaguben and Dhaniben. The accused had run away after inflicting knife blows on Madhu in a nearby bush where he remained hidden till the police arrested him in the evening at about 7 O' clock under a panchanama. The accused had led the panchas to the place where he had concealed the knife in the thorny bush which was discovered at his instance. The pant which the accused was wearing was seized under a panchanama at the time of his arrest. The said pant as well as the discovered knife were having blood stains which, on analysis, were found to be of blood group AB which was the blood group of deceased Madhu.

3. The trial court, on the basis of the material on record, found that the prosecution had established beyond any shadow of doubt that the accused had caused multiple incised wounds to Madhu with a knife at about 11 O' clock in the morning on 17.6.88 in the outskirts of village Kherva with an intention to cause her death and was therefore guilty of the offence of murder.

4. The learned counsel for the accused contended that the informant had not seen the incident and that there was delay in filing of the F.I.R. which would indicate that the name of the accused was not known. He further argued that Bhaguben, the alleged eye witness was an interested witness as she was distantly related to the father of Madhu. Moreover, she had not given details of

the blows given by the accused to Madhu. He submitted that the fact that the police did not enquire from Purandas about the incident shows that the version put-forth by the prosecution is a concocted one. The learned counsel also argued that there was no motive on the part of the accused to kill his wife and the fact that he had gone with her to the place of his in-laws at village Kherva shows that he did not have any intention to kill her. The learned counsel further submitted that in any event, it should be inferred that the incident must have occurred due to some provocation given by Madhu and therefore the matter should be dealt with in light of Exception 1 to Sec. 300 of the Indian Penal Code.

5. The learned Additional Public Prosecutor supported the reasoning and findings of the trial court and submitted that the version of the eye witnesses coupled with the medical evidence and the report of Serologist showing the blood stains on the knife which was discovered at the instance of the accused and his pant which was seized when he was arrested which were proved to be of the same blood group as that of the accused clearly established the guilt of the accused beyond any shadow of doubt.

6. The informant Nagar Nanjibhai, in his deposition exh. 12, has stated that on the day of the incident at about 11 O' clock in the morning, he was answering call of nature near the place of his work where relief project was going on. He had gone for labour work in the morning at 7 O' clock. Around 11 O' clock, he heard shouts of Bhaguben who also belongs to the same village for help as Madhu was being assaulted. He, therefore, got up and started running towards that direction and saw that the accused was running with a knife in his hand towards the eastern direction. This witness chased the accused but the accused hid himself in the bushes of babool trees and could not be traced. He came back to the spot where Madhuben was lying seriously injured and profusely bleeding. He has stated that he had seen the accused giving a knife blow before he started running away when this witness had given a shout. He had recognized him as Keshavdas who was married to a girl belonging to their village. According to this witness, Pama Naran, Daya Uka, Bhaguben and other people of the village had gathered there. Purandas tried to telephonically inform the police but the telephone did not connect. He, therefore, went along with Gangaram on a motor bike and the police vehicle came from Bajana and his complaint exh. 13 was recorded. According to this witness, he had asked the parents of Madhuben as to what was the trouble

and was told that her mother-in-law was quarrelling with Madhu because she was not conceiving a child though married for four to five years. In his cross-examination, he has maintained that he had immediately started running on hearing cries of Bhaguben and had seen the incident and the accused running away. He stated that Bhaguben was collecting wood about 200 ft. away and she too had started running. The version of this witness is fully corroborated by the contents of the F.I.R. exh. 13 in which he had stated that on hearing shouts of Bhaguben to the effect that Madhuben was being beaten, he had started running and on seeing him, the accused, who was assaulting Madhu, started running with the blood stained knife in his hands towards the eastern direction and he had chased him along with others. The accused, however, concealed himself in the thorny bushes. They had, thereafter, noticed that several knife blows were given by the accused to Madhu who was profusely bleeding and within a short-while she died. Her parents arrived there and this witness told them that Madhu was given knife blows by their son-in-law Keshavdas. On asking them about the reason behind such behaviour, he was told that as Madhuben was not conceiving a child though married since five years, there used to be quarrels between the husband and wife and her mother-in-law.

7. Bhaguben who had raised shouts on seeing the incident has deposed at exh. 14 that she was picking wood at the time of the incident, when she saw Madhu coming from the eastern direction with a "theli" (a cloth bag) along with her husband Keshavlal who was walking behind her. When she was at a distance of about 12 to 15 ft. from them, she saw the accused giving knife blows to Madhu. Madhu had, at that time, shouted for help saying "Bhagu foi, help". This witness, therefore, raised cries for helping Madhu. She has stated that on her raising cries, witness Dhaniben and the complainant Nagarbhai had reached there. Thereafter, many others had also come. The accused had run away with his knife and many persons chased him but he went into the bushes. Madhuben was severely injured due to multiple knife blows on her back and at several places. She got a couple of fits and then died. According to her, she told her parents about the incident who said that there were quarrels over Madhu not conceiving a child. This witness knew the accused and identified him in the court. In the cross-examination, she has stuck to her version and barring a very minor omission about her having told Jivandas about the incident, there is nothing brought out in her cross-examination which can create any doubt over her

version. Her presence at the scene of offence has been referred to by the informant Nagarbhai who had stated that on hearing her shouts, he had got up and started running towards the spot where the incident was taking place.

8. The third eye witness Dhaniben, in her deposition exh. 16, has stated that on the day of the incident at about 11 O' clock, she was working in the relief work which was undertaken in the village near the pond. She had seen the accused Keshavdas giving knife blows to Madhuben from a distance of about 12 ft. At that time Bhaguben had raised cries and shouted for help as Madhuben was being assaulted. She also started raising cries for help. At that time Nagarbhai came there and therefore the accused Keshavdas started running away. Nagarbhai chased him but Keshavdas, who had a knife in his hand, concealed himself in the thorny bushes. She has identified the muddammal article no.9-knife as the knife with which she had seen the accused inflicting blows to Madhu. She has stated that Madhu had died after getting a couple of fits. In the cross-examination, she has denied the suggestion that she had not seen the incident.

9. Even Daya Uka, in his deposition exh. 17, has stated that he was working in the relief works near the pond of the village and he had seen from a distance of about 400 to 500 ft. from the place of the incident that Nagarbhai was shouting and running after the accused Keshavdas, who had a knife in his hand. Keshavdas got into the bushes near "pitchkari" (name of the area) and hid himself. Thereafter, all of them came near Madhu and he saw that she was given several knife blows on her back and her waist. She died after getting a couple of fits. In his cross-examination, he admitted that he had not seen the blows being given to Madhuben. However, his version clearly supports the version of the eye witnesses who had seen the accused giving knife blows to Madhuben and thereafter running away with the blood stained knife in his hand and getting into the thorny bushes so that he may not be traced.

10. The witnesses Jasuben and Jivandas, who were the parents of Madhu had reached the spot after the incident and they have, in their depositions exh. 18 & 21 respectively, stated about the ill-treatment given to Madhu by her husband and mother-in-law for her not conceiving a child. They have stated that the accused and Madhu had come to their place on the previous day and on the day of the incident, they had gone to the temple

of `Baliyabapa'. When they reached the spot where Madhu was lying dead, they were informed, about the knife blows given by the accused to Madhu, by Bhaguben, Dhaniben, Nagarbhai and others. Their version, thus, fully corroborates the version of the eye witnesses.

11. The evidence of the eye witnesses and other witnesses who came at the time when the accused was running away towards the nearby bushes establishes beyond any doubt that the accused had given all the knife blows to his wife Madhu while she was walking ahead of him at about 11 O'clock on 17.6.88 in the outskirts of village Kherva near the place where the relief work was going on and after injuring Madhu, when he saw the informant and others coming there, he started running and went away with his knife into the bushes. He was traced out in the evening, hidden in the bushes, as is clear from the evidence of panch witness Punjabhai who has, in his deposition exh. 26 proved the arrest panchanama exh. 27. The accused was traced out in the thorny bushes of babool trees in the evening of the day of the incident as recorded in the panchanama. As per the information, when the panchas had reached with the police to the thorny bushes about 32 ft. to the eastern side of the pond, they had seen one person sleeping in the bushes and the panchas at that time asked him to come out of the bushes and when he came out, he was asked his name. He had said that his name was Keshavdas Motiram, who is the accused. His pant was having blood stains and it was seized at that time. The circumstance that the accused who had accompanied his wife on the previous day to this village and had stayed overnight at this father-in-law's house was found to be hiding in the thick thorny bushes near the pond till the evening when he was detected there at 7 O'clock and arrested under the panchanama exh.27, goes against the accused. If the accused was not involved in the crime, there was no reason for him to conceal himself in the bushes when his wife was brutally assaulted and taken to the hospital. The pant which was seized at the time of his arrest was having blood stains which, on analysis, were found to be of blood group `AB' as per the Chemical Analyzer and Serologist's report exh.36 collectively which was also the blood group of Madhu, as analyzed from her clothes which were recovered from her body at the time of the post-mortem examination. The discovery panchanama exh.31 was proved in the deposition of the panch witness Babu, who has deposed at exh.30 that the accused had shown readiness to show the place where he had concealed the knife in the bushes of babool trees. The accused had led them to that place and since the bushes were thick, they had to be cut by calling for an

axe from the prosecution witness Talshi, who in his deposition exh.22, has supported that aspect of the matter that his axe was borrowed for the purpose. The panch Babu has stated that the muddammal article no.9 knife was discovered from the place shown by the accused. The panchanama exh. 31 fully corroborates his version. The blood stained knife which was seized under that panchanama was sent for blood analysis and as per the Chemical Analyzer's and Serologist's report, the blood stains on the knife were of human blood of group AB which was the group of Madhu's blood. This, therefore, is an important circumstance which also corroborates the version of the eye witnesses and other witnesses who support the prosecution story.

12. We are, therefore, fully satisfied from the evidence on record that it was the accused who had committed murder of his wife Madhu by inflicting multiple injuries on her body with a knife when she was walking ahead of him least suspecting such murderous assault from a person who was expected to be her protector. The learned counsel for the accused has submitted that some quarrel must have taken place between the husband and wife and therefore the accused should be given benefit of Exception 1 to Sec. 300 of the Indian Penal Code by holding that he was deprived of the power of self-control by grave and sudden provocation given by his wife. There is absolutely no valid reason to infer that there was any provocation given by Madhu to the accused. The fact that she did not conceive a child cannot be treated as a provocation to kill her. The medical evidence shows the ghastly manner in which the accused inflicted knife blows on his wife. Dr.Babulal, in his deposition exh. 5 has narrated ten incised wounds which he noticed on the body of Madhu besides an abrasion on her forehead. These injuries are enumerated in column 17 of the post-mortem notes exh. 8 as follows :

"1. A small stab wound 1x1 cm size on RF scapula below the spine of Acromion past of RF scapula with bleeding and deep upto bone.
2. A stab wound 4x2 cm size inside lateral to medical margin of Rt. scapula with bleeding at the level of D3-DH vertebrae.
3. A stab wound 2x2 cm size just outside the vertebrae at it level of D3-DH vertebrae below and inside the second wound.
4. A stab wound 2x2 cm size lateral to third wound with bleeding.
5. A stab wound 3x2 cm size on Rt side below the inferior angle of Rt. scapula with bleeding

6. A stab wound 4x2 cm size outside the vertebrae at the level of D10-D11 vertebrae with bleeding on Lt side.
7. A stab wound 3x2 cm size just lateral to D12 vertebrae just lateral to sixth wound on left side.
8. A stab wound 3x2 cm size on Lt side at the level of twelfth libnean Lt. mid axillan line with bleeding.
9. A stab wound 2x1 cm size outside the mid axillan line at the level of D11 vertebrae.
10. A stab wound 2x2 cm size outside (lateral to) D12 vertebrae on Rt side.
11. An abrasion on forehead."

Dr.Babulal has deposed that all these injuries were ante-mortem and were sufficient in the ordinary course of nature to cause death. He has stated that these injuries were possible by muddammal article no.9-knife. Besides corroborating the version of the eye witnesses, the medical evidence discloses the cruel manner in which the offence was committed and there is absolutely no warrant to invoke any of the exceptions to Sec. 300 of the Indian Penal Code in the present case. We, therefore, find ourselves in full agreement with the reasoning and findings of the trial court in the impugned judgment for convicting the accused for the offence under Sec. 302 of the Indian Penal Code.

This appeal is, therefore, dismissed.

( R.K.ABICHANDANI, J )

( SHARAD D DAVE, J )

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